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# Tan See Meng & Ors v Able Oils & Fats Sdn Bhd (formerly known as Able Export Sdn Bhd) and other appeals

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS W-02(IM)(NCC)-1240–07 OF 2022, W-02(IM)(NCC)-1544–08 OF 2022 AND W-02(IM)(NCC)-2041–10 OF 2022
RAVINTHRAN, MARIANA YAHYA AND LIM CHONG FONG JJCA
19 APRIL 2024

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*Civil Procedure — Security for costs — Security for plaintiff's costs — Whether plaintiff had made out case for security for costs to be ordered against defendants pending hearing of their appeal to Court of Appeal*

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The instant appeals were against certain orders the High Court had granted against the appellants in a civil suit brought against them by the respondent. The first three appellants were the shareholders of the fourth and fifth appellants. In response to the filing of the appeals, the respondent filed three applications for security for costs against the appellants pursuant to s 44(1) of the Courts of Judicature Act 1964 ('the CJA') and r 17(1) of the Rules of the Court of Appeal 1994 ('the RCA'). The grounds for the applications were that: (a) the three appeals had no good prospect of success and their disposal would likely be protracted due to the fact that the first appellant had been adjudged a bankrupt and a judicial management order ('JMO') had been made against the fourth appellant, thereby rendering both of them impecunious; and (b) the appellants had yet to pay the costs that was awarded against them by the High Court. The respondent sought a total sum of RM125,000 by way of security of costs, comprised of RM35,000 unpaid High Court costs and RM30,000 costs for each of the three appeals herein. In resisting the applications, the appellants contended that apart from the impecuniosity of the first and fourth appellants — which in itself was not a basis to ask for security for costs — the respondent had failed to show any other good reason why the applications should be allowed.

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**Held**, unanimously ordering the fourth and fifth appellants to each pay RM50,000 as security for costs for all the three appeals within one month failing which the respondent would be at liberty to apply to strike out the appeals; dismissing the application for security for costs against the first, second and third appellants:

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(1) The respondent had made out a case for security for costs to be ordered against the fourth and fifth appellants. The order against the fourth appellant, which had been placed under a JMO and was unable to pay its

costs, was made pursuant to s 580A of the Companies Act 2016. The fifth appellant was also impecunious and unable to pay its costs since it was dormant and had no income stream. The fifth appellant's sole asset was the land that housed the fourth appellant's factory and it could not be considered for security for costs because it formed part and parcel of the subject-matter of the agreement that was now under appeal (see paras 29–30).

(2) The threshold requirements in O 23 r 1 of the Rules of Court 2012 had not been met for security for costs to be ordered against the first, second and third appellants. The three appellants were not foreign parties residing out of jurisdiction or nominal parties acting on behalf for the benefit of others, nor were they parties who constantly changed addresses to evade the consequences of the appeal. Although their appeals prima facie seemed weak, they were not hopeless. The impecuniosity of the first appellant by itself was not a sufficient ground to order him to pay security for costs (see paras 26–27).

(3) With regard to the High Court costs that had not been paid by the appellants, those costs should be recovered through enforcement proceedings instead of being ordered to be paid as security for costs (see para 28).

(4) The respondent contended that the applications for security for costs were not made promptly and after giving of prior notice. But these were not requirements under s 44(1) of the CJA or r 17(1) of the RCA. In any event, the court found no inordinate delay or lackadaisical conduct on the part of the respondent in making the applications. The appellants had also not shown that they had suffered any prejudice on account of alleged delay on the respondent's part (see para 31).

(5) The court considered RM50,000 as a fair and reasonable amount as security for costs for all the three appeals herein which would be heard together (see para 32).

**[Bahasa Malaysia summary**

Rayuan semasa adalah terhadap perintah tertentu yang telah diberikan oleh Mahkamah Tinggi terhadap perayu dalam saman sivil yang dikemukakan terhadap mereka oleh responden. Tiga perayu pertama adalah pemegang saham perayu keempat dan kelima. Sebagai balasan kepada pemfailan rayuan, responden memfailkan tiga permohonan untuk jaminan kos terhadap perayu-perayu menurut s 44(1) Akta Mahkamah Kehakiman 1964 ('AMK') dan k 17(1) Kaedah-Kaedah Mahkamah Rayuan 1994 ('KMR'). Alasan bagi permohonan itu adalah bahawa: (a) ketiga-tiga rayuan itu tidak mempunyai prospek untuk berjaya dan pelupusan mereka mungkin akan berlarutan kerana fakta bahawa perayu pertama telah diputuskan bankrap dan perintah pengurusan kehakiman ('PPK') telah dibuat terhadap perayu keempat, dengan

A itu menjadikan kedua-dua mereka tidak cekap; and (b) perayu masih belum membayar kos yang telah diawardkan terhadap mereka oleh Mahkamah Tinggi. Responden meminta sejumlah RM125,000 sebagai jaminan kos, terdiri daripada RM35,000 kos Mahkamah Tinggi yang belum dibayar dan RM30,000 kos bagi setiap tiga rayuan di sini. Dalam menentang permohonan
B itu, perayu-perayu berhujah bahawa selain ketidakcekapan perayu pertama dan keempat — yang dengan sendirinya bukan asas untuk memohon jaminan kos — responden telah gagal menunjukkan sebarang alasan kukuh lain mengapa permohonan itu harus dibenarkan.

C **Diputuskan**, sebulat suara memerintahkan perayu keempat dan kelima masing-masing membayar RM50,000 sebagai jaminan kos bagi ketiga-tiga rayuan dalam tempoh satu bulan jika gagal responden mempunyai hak untuk memohon untuk membatalkan rayuan; menolak permohonan jaminan kos terhadap perayu pertama, kedua dan ketiga:

D (1) Responden telah membuktikan kes untuk jaminan kos yang akan diperintahkan terhadap perayu keempat dan kelima. Perintah terhadap perayu keempat, yang telah diletakkan di bawah PPK dan tidak dapat membayar kosnya, dibuat menurut s 580A Akta Syarikat 2016. Perayu
E kelima juga tidak cekap dan tidak mampu membayar kosnya kerana ia tidak aktif dan tidak mempunyai aliran pendapatan. Aset tunggal perayu kelima ialah tanah yang menempatkan kilang perayu keempat dan ia tidak boleh dipertimbangkan untuk jaminan kos kerana ia merupakan sebahagian daripada perkara perjanjian yang kini dalam rayuan (lihat
F perenggan 29–0).

(2) Keperluan ambang dalam A 23 k 1 Kaedah-Kaedah Mahkamah 2012 tidak dipenuhi untuk jaminan kos yang akan diperintahkan terhadap perayu pertama, kedua dan ketiga. Ketiga-tiga perayu bukanlah pihak asing yang menetap di luar bidang kuasa atau pihak nominal yang
G bertindak bagi pihak untuk faedah orang lain, dan juga bukan pihak yang sentiasa menukar alamat untuk mengelak akibat rayuan. Walaupun rayuan prima facie mereka kelihatan lemah, mereka tidak putus asa. Ketidakmampuan perayu pertama dengan sendirinya bukanlah alasan yang mencukupi untuk memerintahkan dia membayar jaminan kos
H (lihat perenggan 26–27).

(3) Berkenaan dengan kos Mahkamah Tinggi yang belum dibayar oleh perayu-perayu, kos tersebut hendaklah dipulihkan melalui prosiding penguatkuasaan dan bukannya diperintahkan untuk dibayar sebagai
I jaminan bagi kos (lihat perenggan 28).

(4) Responden berpendapat bahawa permohonan untuk jaminan kos tidak dibuat dengan segera dan selepas memberi notis awal. Tetapi ini bukan keperluan di bawah s 44(1) AMK atau r 17(1) KMR. Dalam apa jua keadaan, mahkamah mendapati tiada kelewatan yang melampau atau

kelakuan kurang sopan di pihak responden dalam membuat permohonan. Perayu-perayu juga tidak menunjukkan bahawa mereka telah mengalami apa-apa prejudis kerana dakwaan kelewatan di pihak responden (lihat perenggan 31).

(5) Mahkamah menganggap RM50,000 sebagai jumlah yang adil dan munasabah sebagai jaminan untuk kos bagi ketiga-tiga rayuan di sini yang akan didengar bersama (lihat perenggan 32).]

**Cases referred to**

*Faridah Begum bt Abdullah v Dato' Michael Chong* [1995] 2 MLJ 404, HC (refd)
*Haidakota (M) Sdn Bhd v Tan Tiam Chai* [2008] MLJU 654, CA (refd)
*Kasturi Palm Products v Palmex Industries Sdn Bhd* [1986] 2 MLJ 310 (refd)
*Ling Khee Ming v Ling Shew Kue @ Ling Chai Yuen & Anor* [2018] MLJU 1059; [2018] 1 LNS 1139, CA (refd)
*Luminous Crossroads Sdn Bhd v Lim Kong Huat Construction* [2001] MLJU 475; [2002] 5 CLJ 100, HC (refd)
*Menon v Abdullah Kutty* [1974] 1 MLJ 130, FC (refd)
*Ooi Meng Khin v Amanah Scotts Properties (KL) Sdn Bhd & Ors and another appeal* [2013] 5 MLJ 773, CA (refd)
*Sir Lindsay Parkinson & Co Ltd v Triplan Ltd* [1973] 2 All ER 273, CA (refd)
*Skrine & Co v MBF Capital Bhd & Anor* [1998] 3 MLJ 649; [1998] 3 CLJ 432, CA (refd)

**Legislation referred to**

Companies Act 1965 (repealed by Companies Act 2016) s 351
Companies Act 2016 s 580A
Courts of Judicature Act 1964 s 44(1)
Rules of Court 2012 O 23, O 23 r 1, 1(1), O 22A r 5(1)
Rules of the Court of Appeal 1994 rr 17, 17(1), 105

**Appeal from**: *Able Oils & Fats Sdn Bhd (previously known as Able Export Sdn Bhd) v Tan See Meng & Ors* [2022] MLJU 1809 (High Court, Kuala Lumpur)

*Awang Armadajaya bin Awang Mahmud (with Hasshahari bin Johari Mawi, Muhamad Hafizan Shafuan bin Kamarulzaman and Mahzal Nazrin bin Mahat) (Hasshahari & Partners) for the appellants.*
*Lim Koon Huan (with Siew Ka Yan) (Skrine) for the respondent.*

**Lim Chong Fong JCA:**

INTRODUCTION

**[1]** These are interlocutory applications for security for costs pending the hearing of appeal in the Court of Appeal.

**[2]** The first to third appellants are Malaysian citizens while the fourth and fifth appellants are Malaysian incorporated private limited companies.

**[3]** The respondent is also a Malaysian incorporated private limited company.

**[4]** We heard the applications on 2 February 2022 and unanimously decided as follows:

(a) we order the fourth appellant to pay security of costs of RM50,000 in total in respect of all three pending appeals referred in encls 31, 37 and 34 within one month from today. We also ordered the fifth appellant to pay security of costs of RM50,0000 in total in respect of all three pending appeals referred to in encls 31, 37 and 34 within one month from today. If such security is not given within the stipulated time, the respondent is at liberty to apply to strike out Appeals No 1240, 1544 and 2041;

(b) case management fixed on 4 March 2024. The pending appeals to be heard after this date;

(c) we dismiss the application for security for costs against the first, second and third appellants. No order as to costs; and

(d) as for the first to third appellants, the appeals are adjourned until the fourth and fifth appellants pay the amount of RM50,000. If security for costs is not paid by 4 March 2024, all three appeals by the fourth and fifth appellants will be struck out. As for appeals by the first to third appellants, the date to hear the appeals will be fixed by the court.

**[5]** We now provide the grounds of our decision below.

BACKGROUND

**[6]** The first to third appellants are shareholders of the fourth and fifth appellants.

**[7]** The fourth appellant is in the business of sale of edible oils and also operates a factory that filters and recycles oil for its business. The fifth appellant is dormant but is the registered proprietor of the land that houses the factory operated by the fifth appellant.

**[8]** By a call option agreement entered into between the first to third appellants and the respondent ('agreement') for purposes of the continuing of the aforementioned business and factory operation.

**[9]** By reason of a dispute that arose between the first to third appellants and the respondent in respect of the agreement, the respondent on 2 June 2022 commenced Kuala Lumpur High Court Suit No WA-22NCC-246–06 of 2022 ('suit') against the appellants.

**[10]** Upon further applications of the respondent pursuant to the suit, the High Court had made the following orders on 1 July 2022, 12 August 2022 and 4 October 2022 respectively ('decisions'):

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DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM NEGERI WILAYAH PERSEKUTUAN KUALA LUMPUR
(BAHAGIAN DAGANG)

**GUAMAN NO. WA-22NCC-246-06/2022**

ANTARA

ABLE OILS & FATS SDN BHD
(No. Syarikat: 201601034916 [1205857-A])
...PLAINTIF

DAN

1. TAN SEE MENG
(No. K/P: 570604-10-6303)
2. TAN SEE NONG
(No. K/P: 440517-10-5147)
3. LIM PECK HONG
(No. K/P: 601206-10-5304)
4. SAWIT RAYA SDN BHD
(No. Syarikat 198301009872 [105130-K])
5. KIAN HUAT OILMILLS SDN BHD
(No. Syarikat: 196501000151)
...DEFENDAN-DEFENDAN

**DI HADAPAN HAKIM**
**ONG CHEE KWAN**
**PADA 1 JULAI 2022**

**DALAM KAMAR**
**MELALUI PLATFORM SIDANG**
**VIDEO SECARA ZOOM**

**PERINTAH UNTUK INJUNKSI**
(Kandungan 5)

**ATAS PERMOHONAN** Plaintif yang dinamakan di atas yang ditetapkan untuk pendengaran pada hari ini **DAN SETELAH MEMBACA** Notis Permohonan bertarikh pada 10 Jun 2022

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(Kandungan 5), Perintah Untuk Injunksi Ad Interim bertarikh 15 Jun 2022 dan semua kertas-kertas kausa yang berkenaan yang kesemuanya difailkan di sini **DAN SETELAH MENDENGAR** Lim Koon Huan (Karen Tan Wee Sean bersamanya) peguam bagi pihak Plaintif dan Hasshahari Bin Johari Mawi peguam bagi pihak Defendan-Defendan, **ADALAH DIPERINTAHKAN** bahawa Defendan-Defendan sama ada dengan sendirinya, ejen-ejen, pekhidmat-pekhidmat, pekerja-pekerja atau sebaliknya bagaimanapun dihalang daripada :-

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(1) berurusan dengan atau selainnya melupuskan aset, stok, inventories dan bahan mentah dalam simpanan ladang tangki Defendan Keempat (termasuk minyak sawit mentah (*crude palm oil*), kelapa mentah minyak (*crude coconut oil*), pemendekan (*shortening*) dan lemak susu kontang (*anhydrous milk fat*)) melainkan dan kecuali untuk tujuan memenuhi kontrak-kontrak yang telah dimasuki di antara Defendan Ke-4 dengan pelanggan-pelanggannya pada atau sebelum 25-5-2022, sementara menunggu pelupusan tindakan ini;

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(2) berurusan dengan atau selainnya melupuskan wang dalam akaun bank Defendan Keempat (termasuk United Overseas Bank (Malaysia) Berhad Akaun No: 229-309-070-1 dan Public Bank Berhad Akaun No: 3121-2155-18) dan akaun bank Defendan Kelima (termasuk Malayan Banking Berhad Akaun No: 512642405943) melainkan dan kecuali untuk

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tujuan pembayaran yang dibuat dalam perjalanan biasa perniagaan (*in the ordinary course of business*) Defendan Keempat dan/atau Defendan Kelima dan pembayaran untuk pembiayaan (*financings*) yang diperoleh oleh Defendan Keempat dan/atau Defendan Kelima daripada institusi-institusi kewangan, sementara menunggu pelupusan tindakan ini;

(3) mengalih keluar atau memusnahkan mana-mana buku, rekod kewangan Defendan Keempat dan Defendan Kelima sementara menunggu pelupusan tindakan ini;

(4) memecat atau menyebabkan pemecatan daripada pengurusan Defendan Keempat, Pasukan Pengurusan Plaintif (termasuk tetapi tidak terhad kepada Tan Chin Yang, Phuar Leong Thye dan Low Shu Hui) yang dilantik menurut Klausa 4 Perjanjian *Call Option* bertarikh 5.3.2021 yang dimasuki di antara Defendan Pertama, Defendan Kedua dan Plaintif yang berkenaan dengan saham-saham dalam Defendan Keempat;

(5) menghalang wakil-wakil Plaintif (termasuk tetapi tidak terhad kepada Tan Chin Yang, Phuar Leong Thye dan Low Shu Hui) daripada mengakses premis Defendan Keempat di Lot 2227, Jalan Kasawari, Batu 9, Kebun Baru, 42500 Telok Panglima Karang, Selangor;

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(6) menyebabkan atau mendapatkan sebarang pertukaran penandatangan akaun-akaun bank Defendan Keempat dengan United Overseas Bank (Malaysia) Berhad (termasuk Akaun No. : 229-309-070-1) atau untuk penutupan akaun-akaun tersebut, sementara menunggu pelupusan tindakan ini;

sehingga pendengaran tindakan ini **DAN AKHIRNYA ADALAH DIPERINTAHKAN** bahawa kos dan kos yang berkaitan dengan permohonan ini dijadikan kos dalam kausa dan pihak-pihak diberi kebebasan untuk memohon.

Bertarikh pada 1 Julai 2022.

RINI TRIANY BINTI MUHAMAD ALI
Timbalan Pendaftar
Mahkamah Tinggi Malaya
Kuala Lumpur

Timbalan Pendaftar
Mahkamah Tinggi Malaya
Kuala Lumpur

**PENGINDORSAN DIBAWAH ATURAN 45 KAEDAH 7 KAEDAH-KAEDAH MAHKAMAH 2012**

Jika kamu, Tan See Meng (No. K/P: 570604-10-6303), yang dinamakan dalam ini, dan/atau ejen-ejen, dan/atau pekhidmat-pekhidmat dan/atau pekerja-pekerja kamu tidak mematuhi Perintah kamu boleh dikenakan proses pelaksanaan bagi maksud memaksa kamu supaya mematuhinya.

Jika kamu, Tan See Nong (No. K/P: 440517-10-5147), yang dinamakan dalam ini, dan/atau ejen-ejen, dan/atau pekhidmat-pekhidmat dan/atau pekerja-pekerja kamu tidak mematuhi Perintah

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B DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM NEGERI WILAYAH PERSEKUTUAN KUALA LUMPUR
(BAHAGIAN DAGANG)
**GUAMAN NO.: WA-22NCC-246-06/2022**

ANTARA

C ABLE OILS & FATS SDN BHD
(No. Syarikat: 201601034916 [1205857-A]) ...PLAINTIF

DAN

1. TAN SEE MENG
(No. K/P: 570604-10-6303)

2. TAN SEE NONG
(No. K/P: 440517-10-5147)

D 3. LIM PECK HONG
(No. K/P: 601206-10-5304)

4. SAWIT RAYA SDN BHD
(No. Syarikat. 198301009872 [105130-K])

5. KIAN HUAT OILMILLS SDN BHD
(No. Syarikat. 196501000151)

E ...DEFENDAN- DEFENDAN

**DI HADAPAN HAKIM**
**ONG CHEE KWAN**
**PADA 12 OGOS 2022**

**DALAM KAMAR**
**MELALUI PLATFORM SIDANG**
**VIDEO SECARA ZOOM**

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**PERINTAH UNTUK PERINTAH-PERINTAH LANJUTAN**
**(Kandungan 41)**

G **ATAS PERMOHONAN** pihak Plaintif yang dinamakan di atas **DAN SETELAH MEMBACA** Notis Permohonan (Kandungan 41) bertarikh pada 29 Julai 2022 dan kesemuanya yang difailkan di sini **DAN SETELAH**

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**MENDENGAR** Lim Koon Huan (Siew Ka Yan bersamanya), peguamcara bagi pihak Plaintif dan Awg Armadajaya bin Awg Mahmud (Hasshahari Bin Johari Mawi bersamanya), peguamcara bagi pihak Defendan-Defendan, **MAKA ADALAH PADA HARI INI DIPERINTAHKAN** bahawa:-

(1) Pasukan Pengurusan Plaintif (termasuk tetapi tidak terhad kepada Tan Chin Yang, Phuar Leong Thye dan Low Shu Hui) berhak mengetuai pengurusan Defendan Ke-4 dan Ke-5 dan bertanggungjawab ke atas pengurusan harian Defendan Ke-4 dan Ke-5 dan penyelarasan aktiviti-aktiviti pentadbiran dan perniagaan Defendan Ke-4 dan Ke-5;

(2) Pasukan Pengurusan Plaintif diberi akses penuh dan tanpa had kepada semua buku dan rekod Defendan Ke-4 dan Ke-5, termasuk tetapi tidak terhad kepada penyata-penyata bank, laporan-laporan pengeluaran harian, laporan-laporan kapasiti tangki, laporan-laporan semakan stok akhir bulan, laporan-laporan stok minyak, ringkasan harian untuk minyak masuk dan keluar, laporan-laporan penghantaran harian, buku log rumah pam, rekod-rekod aktiviti penapisan dan pemecahan, kontrak-kontrak jualan dan invois-invois, pesanan-pesanan penghantaran, pesanan-pesanan pembelian, kontrak-kontrak, e-mel syarikat, surat-menyurat, kamera pemantauan dan rakaman-rakaman pengawasan keselamatan;

(3) Pasukan Pengurusan Plaintif diberi kuasa-kuasa berikut bagi tujuan menjalankan pengurusan harian Defendan Ke-4 dan Ke-5 dan penyelarasan aktiviti-aktiviti pentadbiran dan perniagaan Defendan Ke-4 dan Ke-5:-

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(a) Untuk mengambil kawalan sepenuhnya terhadap premis Defendan Ke-4 dan Ke-5 termasuk tetapi tidak terhad kepada pejabat dan kilang penapisan;

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(b) Untuk mengambil kawalan sepenuhnya keselamatan premis Defendan Ke-4 dan Ke-5 termasuk tetapi tidak terhad kepada pejabat dan kilang penapisan;

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(c) Untuk memantau pergerakan-pergerakan mana-mana lori tangki minyak yang keluar masuk dari premis Defendan Ke-4 dan Ke-5;

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(d) Untuk menjalankan pemeriksaan stok secara fizikal terhadap minyak dan barangan di premis Defendan Ke-4 dan Ke-5;

(e) Untuk mendapatkan dan menjalankan sebarang perniagaan atau transaksi Defendan Ke-4 dan Ke-5;

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(f) Untuk menggaji atau menamatkan pekerja-pekerja dan/atau kontraktor-kontraktor bebas (*independent*) bagi pihak Defendan Ke-4 dan Ke-5;

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(g) Untuk mengeluarkan cek-cek dan membuat pembayaran-pembayaran dalam perjalanan biasa perniagaan Defendan Ke-4 dan Ke-5, termasuk tetapi tidak terhad kepada pembayaran kepada pembekal-pembekal, vendor dan kontraktor-kontraktor serta pembayaran untuk pinjaman-pinjaman yang diperoleh oleh Defendan Ke-4 dan/atau Ke-5 daripada institusi-institusi kewangan;

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(h) Untuk melaksanakan atau mengeluarkan apa-apa dokumen, surat atau e-mel atas nama Defendan Ke-4 dan Ke-5;

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(i) Untuk melantik mana-mana orang, ejen, akauntan, juruukur atau orang lain yang berkelayakan profesional untuk membantu Pasukan Pengurusan Plaintif termasuk tetapi tidak terhad kepada menjalankan tinjauan stok dan semakan stok;

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(j) Untuk berhubung dengan mana-mana pihak berkuasa yang berkaitan termasuk tetapi tidak terhad kepada Jabatan Kastam Di-Raja Malaysia, Lembaga Hasil Dalam Negeri, Polis Di-Raja Malaysia dan Lembaga Minyak Sawit Malaysia untuk membuat atau menarik balik sebarang laporan atas nama Defendan Ke-4 dan Ke-5;

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(k) Untuk mengambil semua langkah lain yang difikirkan perlu oleh Pasukan Pengurusan Plaintif;

(4) Pengawal-pengawal keselamatan kini, pengawal-pengawal Jabatan Sukarelawan Malaysia (RELA) dan/atau mana-mana pengawal-pengawal keselamatan atau pegawai-pegawai keselamatan yang dilantik oleh Defendan-Defendan Pertama, Ke-2 dan/atau Ke-4 dan/atau agen-agen mereka dikeluarkan dari premis Defendan Ke-4 dan Ke-5 dan digantikan dengan TKM Force Security Sdn Bhd (No. Ahli Persatuan Industri Keselamatan Malaysia: 0907);

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(5) Sawit Raya Transport Sdn Bhd dan/atau pemandu-pemandu mereka iaitu Ridzuan Bin Rembon (No. K/P: 751029-10-5859), Nazaruddin Bin Abd Jalil (No. K/P: 710912-06-5365), Mazlin

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Bin Ngaton (No. K/P: 700403-10-5585), Azrie bin Mahmood (No. K/P: 850507-10-5313), Ezzie Elman bin Khairudzaman (No. K/P: 930213-10-5385) dan Kasinathan A/L Manikam (No. K/P: 570130-10-5455) mengalih keluar semua lori tangki minyak atau kenderaan-kenderaan milik atau didaftarkan di bawah Sawit Raya Transport Sdn Bhd dari premis Defendan ke-4 dan Ke-5 di Lot 2227, Jalan Kasawari, Batu 9, Kebun Baru, 42500 Telok Panglima Karang, Selangor dan selepas itu lori-lori tangki minyak dan kenderaan-kenderaan tersebut dihalang masuk semula ke premis Defendan Ke-4 dan Ke-5 tanpa kebenaran bertulis daripada Pasukan Pengurusan Plaintif;

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(6) Pekhidmat-pekhidmat atau ejen-ejen dan/atau pekerja-pekerja Defendan Ke-4 khususnya Tan Vin Vin (No. K/P: 830605-10-5036), Ngooi Mong San (No. K/P: 750519-10-5048), Tan Chuan Ling (No. K/P: 870405-10-5556), Tan Heng Chian (No. K/P: 880706-43-5259), Tan Heng Kim (No. K/P: 771008-10-6009), Logeswaran A/L Dhanaraj (No. K/P: 861020-43-5947) dan Kuik Pek Li (No. K/P.: 780106-10-6074) menjalankan dan mematuhi sebarang arahan yang dikeluarkan oleh Pasukan Pengurusan Plaintif (termasuk tetapi tidak terhad kepada Tan Chin Yang, Phuar Leong Thye dan Low Shu Hui) dalam melaksanakan kuasa mereka yang dinyatakan dalam prayer (3) di atas.

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(7) Individu-individu berikut dilantik sebagai sebahagian daripada Pasukan Pengurusan Plaintif untuk membantu Tan Chin Yang, Phuar Leong Thye dan Low Shu Hui:-

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(a) Teo Kah Yeeng (No. K/P: 780927-14-5521) [Komersial & Operasi]

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(b) Khor Choon Mei (No. K/P: 740720-02-5120) [Penghantaran]

(c) Cheah Geok Kim (No. K/P: 640830-10-5430) [Sumber Manusia]

(d) Razali Bin Sareh (No. K/P: 710107-10-6291) [Pengeluaran dan Kawalan Kualiti]

(e) Lim Cim Yee (No. K/P: 850805-05-5238) [Pengeluaran dan Kawalan Kualiti]

(f) Chong Wai Xian (No. K/P: 941224-14-5079) [Perakaunan]

(g) Nur Farizan Binti Suradi (No. K/P: 890208-10-5344) [Perakaunan]

(8) Defendan Pertama dan Ke-2 dan/atau pekhidmat-pekhidmat atau ejen-ejen dan/atau pekerja-pekerja Defendan Ke-4 khususnya Tan Vin Vin (No. K/P: 830605-10-5036), Ngooi Mong San (No. K/P: 750519-10-5048), Tan Chuan Ling (No. K/P: 870405-10-5556), Tan Heng Chian (No. K/P: 880706-43-5259), Tan Heng Kim (No. K/P: 771008-10-6009), Logeswaran A/L Dhanaraj (No. K/P: 861020-43-5947) dan Kuik Pek Li (No. K/P.: 780106-10-6074) dihalang daripada mengganggu (*interfering*) dan menghalang Pasukan Pengurusan Plaintif daripada menjalankan pengurusan harian Defendan Ke-4 dan penyelarasan aktiviti-aktiviti pentadbiran dan perniagaan Defendan Ke-4 termasuk mengeluarkan apa-apa pekeliling atau resolusi pengarah atau mengeluarkan sebarang *directives* atau notis-notis atau arahan-arahan, sama ada secara bertulis atau sebaliknya yang tidak selaras atau bercanggah dengan perintah-perintah yang dipohon di sini;

(9) Pihak-pihak diberikan kebebasan untuk memohon; dan

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(10) Kos dalam kausa.

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Bertarikh 12 Ogos 2022.

RINI TRIANY BINTI MUHAMAD ALI
Timbalan Pendaftar
Mahkamah Tinggi Malaya
Kuala Lumpur

C

Timbalan Pendaftar
Mahkamah Tinggi Malaya
Kuala Lumpur

**PENGINDORSAN DIBAWAH ATURAN 45 KAEDAH 7 KAEDAH-KAEDAH MAHKAMAH 2012**

D

Jika kamu, Tan See Meng (No. K/P: 570604-10-6303), yang dinamakan dalam ini, dan/atau ejen-ejen, dan/atau pekhidmat-pekhidmat dan/atau pekerja-pekerja kamu tidak mematuhi Perintah kamu boleh dikenakan proses pelaksanaan bagi maksud memaksa kamu supaya mematuhinya.

E

Jika kamu, Tan See Nong (No. K/P: 440517-10-5147), yang dinamakan dalam ini, dan/atau ejen-ejen, dan/atau pekhidmat-pekhidmat dan/atau pekerja-pekerja kamu tidak mematuhi Perintah kamu boleh dikenakan proses pelaksanaan bagi maksud memaksa kamu supaya mematuhinya.

F

Jika kamu, Lim Peck Hong (No. K/P: 601206-10-5304), yang dinamakan dalam ini, dan/atau ejen-ejen, dan/atau pekhidmat-pekhidmat dan/atau pekerja-pekerja kamu tidak mematuhi Perintah kamu boleh dikenakan proses pelaksanaan bagi maksud memaksa kamu supaya mematuhinya.

G

Jika Sawit Raya Sdn Bhd (No. Syarikat. 198301009872 [105130-K]) tidak mematuhi Perintah ini, kamu, Tan See Meng (No. K/P: 570604-10-6303) dan Tan See Nong (No. K/P: 440517-10-5147) selaku pengarah-pengarah Sawit Raya Sdn Bhd yang tersebut boleh

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**Note : Serial number will be used to verify the originality of this document via eFILING portal

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TSP017.....80.00 x 1
JUMLAH.....80.00

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM NEGERI WILAYAH PERSEKUTUAN KUALA LUMPUR
(BAHAGIAN DAGANG)
**GUAMAN NO.: WA-22NCC-246-06/2022**

C

ANTARA

ABLE OILS & FATS SDN BHD
(dahulunya dikenali sebagai Able Export Sdn Bhd)
(No. Syarikat: 201601034916 [1205857-A])

...PLAINTIF

DAN

D

1. TAN SEE MENG
(No. K/P: 570604-10-6303)

2. TAN SEE NONG
(No. K/P: 440517-10-5147)

E

3. LIM PECK HONG
(No. K/P: 601206-10-5304)

4. SAWIT RAYA SDN BHD
(No. Syarikat: 198301009872 [105130-K])

5. KIAN HUAT OILMILLS SDN BHD
(No. Syarikat: 196501000151)

F

...DEFENDAN-DEFENDAN

**DI HADAPAN HAKIM**
**ONG CHEE KWAN**
**PADA 4 OKTOBER 2022** **DALAM KAMAR**
**MELALUI PLATFORM SECARA E-REVIEW**

G

**PENGHAKIMAN**

Defendan-Defendan setelah memasukkan kehadiran dalam tindakan ini dan Mahkamah setelah memerintahkan di bawah Aturan 81 Kaedah-Kaedah Mahkamah 2012 bahawa penghakiman sebagaimana diperuntukkan kemudian daripada ini dicatatkan menyebelahi Plaintif terhadap Defendan-Defendan.

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**ADALAH PADA HARI IN DIHAKIMKAN** bahawa:-

(1) Pelaksanaan Spesifik untuk Perjanjian *Call Option* bertarikh 5.3.2021 yang dimasuki di antara Defendan Pertama, Defendan Ke-2 dan Plaintif berkenaan dengan saham-saham dalam Defendan Ke-4 di mana:-

(a) Defendan Pertama dan/atau Ke-2 hendaklah dalam masa 7 hari dari perintah ini menyerahkan atau menyebabkan serahan ke dalam jagaan Plaintif semua dokumen seperti yang dinyatakan dalam **Jadual 1 Terpinda** yang dilampirkan di sini; dan

(b) Defendan Pertama dan/atau Ke-2 hendaklah dalam tempoh 7 hari dari perintah ini melaksanakan dan menyerahkan atau menyebabkan serahan ke dalam jagaan Plaintif semua dokumen seperti yang dinyatakan dalam **Jadual 1A Terpinda Semula** yang dilampirkan di sini, di mana jika gagal, Pendaftar Mahkamah Yang Mulia ini diberikan kuasa untuk melaksanakan dan menguatkuasakan dokumen-dokumen dalam **Jadual 1A Terpinda Semula**.

(2) Pelaksanaan Spesifik untuk Perjanjian *Call Option* bertarikh 5.3.2021 yang dimasuki di antara Defendan Pertama, Defendan Ke-3 dan Plaintif berkenaan dengan saham-saham dalam Defendan Ke-5 di mana:-

(a) Defendan Pertama dan/atau Ke-3 hendaklah dalam tempoh 7 hari dari perintah ini menyerahkan atau menyebabkan serahan ke dalam jagaan Plaintif semua dokumen seperti yang dinyatakan dalam **Jadual 2 Terpinda Semula** yang dilampirkan di sini; dan

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(b) Defendan Pertama dan/atau Ke-3 hendaklah dalam tempoh 7 hari dari perintah ini melaksanakan dan menyerahkan atau menyebabkan serahan ke dalam jagaan Plaintif semua dokumen seperti yang dinyatakan dalam **Jadual 2A Terpinda Semula** yang dilampirkan di sini, di mana jika gagal, Pendaftar Mahkamah Yang Mulia ini diberikan kuasa untuk melaksanakan dan menguatkuasakan dokumen-dokumen dalam **Jadual 2A Terpinda Semula**.

(3) Kos ditetapkan sebanyak RM15,000.00 tertakluk kepada alokatur; dan

(4) Plaintif adalah diberikan kebebasan untuk memohon.

Bertarikh 4 Oktober 2022.

RINI TRIANY BINTI MUHAMAD ALI
Timbalan Pendaftar
Mahkamah Tinggi Malaya
Kuala Lumpur

Timbalan Pendaftar
Mahkamah Tinggi Malaya
Kuala Lumpur

**PENGINDORSAN DIBAWAH ATURAN 45 KAEDAH 7 KAEDAH-KAEDAH MAHKAMAH 2012**

Jika kamu, Tan See Meng (No. K/P: 570604-10-6303), yang dinamakan dalam ini, dan/atau ejen-ejen, dan/atau pekhidmat-pekhidmat dan/atau pekerja-pekerja kamu tidak mematuhi Perintah kamu boleh dikenakan proses pelaksanaan bagi maksud memaksa kamu supaya mematuhinya.

Jika kamu, Tan See Nong (No. K/P: 440517-10-5147), yang dinamakan dalam ini, dan/atau ejen-ejen, dan/atau pekhidmat-pekhidmat

**[11]** The appellants are dissatisfied with the decisions of the High Court and hence lodged Civil Appeal Nos W-02(IM)(NCC)-1240–07 of 2022, W-02(IM)(NCC)-1544–08 of 2022 and W-02(IM)(NCC)-2041–10 of 2022 in this court.

**[12]** The respondent thereafter on 18 May 2023 applied for security for costs vide encls 31, 37 and 34 pursuant to Appeals Nos 1240, 1544 and 2041 respectively.

## FINDINGS OF THIS COURT

**[13]** The provisions on security for costs in the Court of Appeal are prescribed in s 44(1) of the Courts of Judicature Act 1964 ('the CJA') and r 17(1) and/or r 105 of the Rules of the Court of Appeal 1994 ('the RCA') as follows:

> Section 44 Incidental directions and interim orders
>
> (1) In any proceeding pending before the Court of Appeal any direction incidental thereto not involving the decision of the proceeding, any interim order to prevent prejudice to the claims of parties pending the hearing of the proceeding, any order for security for costs, and for the dismissal of a proceeding for default in furnishing security so ordered may at any time be made by a Judge of the Court of Appeal.
>
> (2) Every application under subsection (1) shall be deemed to be a proceeding in the Court of Appeal.
>
> (3) Every order made under subsection (1) may, upon application by the aggrieved party made within ten days after the order is served, be affirmed, varied or discharged by the Court.
>
> Rule 17 Entry of Appeal
>
> (1) Notice of appeal may be given by filing within the time limited for bringing the appeal four copies of the notice of appeal in the Registry of the High Court at the place where the judgment, order or decision complained of was made or given by paying the prescribed fee.
>
> The Court may on the application by the respondent, in any case where it thinks fit, order security for costs to be given, and may order security to be given for the payment of past costs relating to the matters in question in the appeal:
>
> Provided that no order for the payment of security for costs shall be made if the appeal is brought by the Government of Malaysia or any State Government.
>
> (2) The appellant shall, on the date of filing the notice of appeal in the Registry of the High Court, send by registered post one copy of the notice of appeal to the Registry.
>
> (3) A list of appeals of which notice has been filed herein shall be kept in each Registry of each High Court and a consolidated list thereof shall be kept by the Registrar at Putrajaya.

(4) The Registrar of the High Court shall on receiving four copies of the notice of appeal and the prescribed fee and on the security required by sub rule (1) being lodged in Court enter the appeal in the list of appeals, stating therein the title of the cause or matter, the name of the appellant and his solicitors, if any, and the date of such entry, and shall inform the Registrar at Putrajaya of such entry.

(5) The Registrar shall on receipt of information of the entry of an appeal enter the like particulars in the consolidated list of appeals and shall allocate a number to the appeal and shall inform the appellant's solicitor and the Registrar of the High Court who entered the appeal of the number so allocated which shall thenceforth form part of the title of the appeal.

Rule 105 Inherent powers of the Court

For the avoidance of doubt, it is declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

**[14]** Generally, security for costs of appeal is sought by the respondent in defending against the appellant's appeal. In *Ooi Meng Khin v Amanah Scotts Properties (KL) Sdn Bhd & Ors and another appeal* [2013] 5 MLJ 773 (CA), Mohd Hishamudin JCA held as follows with emphasis added by us:

[20] In our judgment, on the facts, we accept the three grounds submitted by the appellants in urging us to dismiss the motions as being valid grounds. Whatever may have been the law and practice in the United Kingdom, we, on our part, however, accept *Menon v Abdullah Kutty* as good and binding authority to dismiss the motions on the said three grounds. This case, cited by the appellants, concerned an application for further security for costs made under r 18(1) of the Federal Court (Civil Appeals) (Transitional) Rules 1963. Rule 18(1) provides:

18 Entry of appeal

(1) Notices of appeal may be given by filing within the time limited for bringing the appeal four copies of the notice of appeal in the Registry of the High Court at the place where the judgment, order or decision complained of was made or given by paying the prescribed fee and by lodging in Court at the same time the sum of five hundred ringgit as security for the costs of the appeal:

Provided that the Court may at any time, in any case where it thinks fit, order further security for costs to be given, and may order security to be given for the payment of past costs relating to the matter in question in the appeal:

Provided further that no deposit by way of security for costs shall be required if the appeal is brought by the Government of Malaysia or any State Government.

(These transitional 1963 Rules of the Federal Court were subsequently replaced by the Rules of the Federal Court 1980 vide PU(A) 33/1980, that came into force on 1 June 1980). It is pertinent to note that the provisions of this r 18(1) are exactly similar as the provisions in r 17(1) of the present Rules of the Court of Appeal. The reason for the application for further security for costs in this case cited is the same as in the present case, that is to say, the impecuniosity of the appellant. In *Menon v Abdullah Kutty*, Raja Azlan Shah FJ (as he then was) in delivering the judgment of

A the Federal Court said:

> *Rule 18(1) of the Federal Court (Civil Appeals) (Transitional) Rules 1963 gives this court a discretion to order further security for costs of an appeal 'at any time, in any case where it thinks fit', Thus this is a discretionary remedy to be exercised in accordance with well-known principles. This court is not bound by any hard and fast rules, but has to look at all the circumstances of the case* (see *Abu bin Mohamed v Voo Fui Tong & Anor* [1938] 1 MLJ 140) ...

**[15]** Furthermore in, *Ling Khee Ming v Ling Shew Kue @ Ling Chai Yuen & Anor* [2018] MLJU 1059; [2018] 1 LNS 1139 (CA), Hamid Sultan bin Abu Backer JCA held as follows with emphasis added by us:

> [11] *Rule 17 of the RCA 1994 makes provision for the Court of Appeal in deserving cases to order further security of costs for the payment of past costs. The threshold to satisfy this part of the rule is high and it will usually be exercised in a case where plaintiff or defendants on the face of record has no merit or appears to be vexatious*. It is not sufficient just to demonstrate to the court that the appellant is impecunious to meet with costs, as such an approach will not be sufficient to balance with the jurisprudence relating to access to justice. That is to say that the poor, needy inclusive of natives, costs related to costs on party to party basis ordered by the trial court.
>
> ...
>
> [15] *When making an application for security for costs under r 17 of the RCA 1994, it is incumbent upon the applicant to satisfy one of the requirements set out in O 23 r 1 of the RC 2012, failing which it may not be a fit application for the Court of Appeal to exercise its jurisdiction as stated in the said rules. That is to say, the test for a 'fit' application necessarily must satisfy the criteria in O 23 of the RC 2012 per se*. The strict provision of O 23 has everything to do with access to justice, the Federal Constitution and the right of appeal under the legislation. *Thus, r 17 of the RCA 1994 must be read together with O 23 of the RC 2012* to appreciate the underlying jurisprudence for security for costs as well as access to justice. Ultimately, the decision whether or not to allow an order for security for costs as well as the quantum is entirely vested with the discretion of the court. The said discretion cannot be arbitrarily exercised.

**[16]** The provision of security for costs in r 17 of the RCA must hence be read with O 23 of the Rules of Court 2012 ('the ROC') which prescribes:

> O 23 Security for costs
>
> 1 (1) Where, on the application of a defendant to an action or other proceedings in the Court, it appears to the Court —
>
> (a) that the plaintiff is ordinarily resident out of the jurisdiction;
>
> (b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so;

(c) subject to paragraph (2), that the plaintiff's address is not stated in the writ or originating summons or is incorrectly stated therein; or

(d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,

then, if, having regard to all the circumstances of the case, the Court thinks it just to do, it may order the plaintiff to give such security for the defendant's costs of the action or other proceedings as it thinks just.

(2) The Court shall not require a plaintiff to give security by reason only of subparagraph (1)(c) if he satisfies the Court that the failure to state his address or the misstatement thereof was made innocently and without an intention to deceive.

The provision in O 23 of the ROC are nonetheless still subject to additional considerations laid down by the English Court of Appeal of *Sir Lindsay Parkinson & Co Ltd v Triplan Ltd* [1973] 2 All ER 273 adopted in *Luminous Crossroads Sdn Bhd v Lim Kong Huat Construction* [2001] MLJU 475; [2002] 5 CLJ 100. These are:

(a) whether the claim is bona fide with good prospect of success;

(b) whether there is an admission in the pleadings or elsewhere that the money is due;

(c) whether there is payment into court of a substantial sum of money (O 22A r 5(1) of the ROC);

(d) whether the application for security for costs is being used to stifle a genuine claim; and

(e) whether the want of means of the plaintiff is a result of the conduct of the defendant.

These additional considerations were formulated for applications for security for costs in the High Court but we are of the view that they are also relevant to applications for security for costs in this court subject to the necessary modification thereto to relate to appeals.

See also *Kasturi Palm Products v Palmex Industries Sdn Bhd* [1986] 2 MLJ 310.

**[17]** That notwithstanding where it involves a body corporate incorporated under the Companies Act 2016 ('the CA'), we add that r 17 of the RCA must also be read with s 580A of the CA which prescribes:

580A Security for costs

(1) Where a company is the plaintiff in any action or other proceedings and if it appears by a credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if the defendant is successful in his defence, the Court may order the plaintiff to give sufficient security for all the costs and to stay all action or proceedings until the security is given.

A (2) The Court may direct the costs of any action or proceedings to be borne by the party to the action or proceedings.

**[18]** In *Skrine & Co v MBF Capital Bhd & Anor* [1998] 3 MLJ 649; [1998] 3 CLJ 432 (CA), Gopal Sri Ram JCA (later FCJ) held as follows when dealing with the equivalent predecessor provision in s 351 of the Companies Act 1965 as follows with emphasis added by us:

B

> [1] Section 351 of the Companies Act 1965 *provides for a two-stage inquiry into whether security for costs should be awarded where the plaintiff is a company. The first step is for the court to determine whether there is credible evidence that the company will be unable to pay the defendant's costs, and the second is to ascertain whether that evidence supports the belief that the company will be unable to do so*.
>
> C
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> ...
>
> [3] A company need not have ready access to cash in order to satisfy a court that it is able to pay the costs of an action it brings, in the event of a failure. It need only satisfy the court that it has sufficient assets to satisfy an order of costs against it. The appeal on the issue of security for costs therefore failed.
>
> D

See also *Haidakota (M) Sdn Bhd v Tan Tiam Chai* [2008] MLJU 654.

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**[19]** Subject to the above requirements, it is ultimately still the discretion of this court on whether it is just and reasonable to order security for costs on the peculiar facts and circumstances.

F

**[20]** The respondent here contended that the first to third appellants ought to pay security for costs because all the three appeals have no good prospect of success. Furthermore, the disposal of these appeals is likely to be protracted by reason of the bankruptcy of the first appellant on 24 March 2023 and the judicial management order ('JMO') obtained against the fourth appellant on 12 January 2023 with no visibility and certainty on outcome. This will invariably subject the respondent to having all the three appeals hanging over the respondent unnecessarily without finality.

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**[21]** Besides the impecuniosity of the first and fourth appellants, the respondent contended that it is prejudicial and unfair to the respondent if the appellants are allowed to continue to pursue the appeals to put the respondent to be further out of pocket on costs despite that the appellants have yet to pay the past costs awarded to the respondent in the High Court.

I

**[22]** As the result, the respondent sought for security for costs in the total sum of RM125,000 comprising of RM35,000 unpaid High Court costs and RM30,000 for each of the three appeals.

**[23]** The appellants in opposing contended the security for costs application were made by the respondent without prior notification as well as not made at the earliest opportunity; hence irregular following *Menon v Abdullah Kutty* [1974] 1 MLJ 130 (FC).

**[24]** Moreover, the appellants contended that other than the impecuniosity of the first and fourth appellants, the respondent failed to demonstrate other cogent circumstances to justify the provision of security of costs. In respect of the unpaid cost orders awarded to the respondent in the High Court, the appellants replied that they were not established to be due.

**[25]** Finally, the appellants contended that the amount of security for costs sought by the respondent is manifestly excessive.

**[26]** We will firstly deal with the first to third appellants. On the evidence before us, we find that they are all not foreign parties residing out of jurisdiction or nominal parties acting on behalf for the benefit of others or parties who are constantly changing address to evade the consequences of the appeal. In this respect, they do not meet the threshold requirements envisaged in the O 23 r 1 of the ROC. Furthermore, albeit we find that their appeal may prima facie seem weak, but they are not hopeless.

**[27]** As to the first appellant who is a bankrupt and therefore impecunious, we however find that, unlike in respect of a body corporate incorporated under the CA, impecuniosity is not per se a cogent factor with regard to ordering security for costs. In this regard, Arifin Zakaria J (later CJ) held as follows in *Faridah Begum bt Abdullah v Dato' Michael Chong* [1995] 2 MLJ 404:

> Apart from the said property, the plaintiff also claims to be a director of two local companies. But the defendant in his affidavit (encl 18A) claims that these two companies do not have any substantial assets and both of them are inactive. The plaintiff did not rebut these allegations either. It is also not disputed that the plaintiff is now a bankrupt. In the above circumstances, I am of the view that the defendant's apprehension over the plaintiff's ability to meet any order as to costs that may be made by the court is not without basis. *However, the plaintiff's impecuniosity by itself is not a sufficient ground for me to make the order for security for costs*. As said by the *Bingham LJ in Thune & Anor v London Properties Ltd & Ors* [1990] 1 All ER 972 at p 979; [1990] 1 WLR 562 at pp 571–572:
>
> > In approaching that question it cannot be too emphatically stated that impecuniosity of a personal plaintiff is never of itself enough to confer on the court a discretion to order security. It is not a ground in O 23 r 1(1)
> >
> > ... But I am for my part firmly of the opinion that it is a matter which the court may, and in a proper case should, consider in exercising a discretion where power to make an order is established.

A See also *Ooi Meng Khin v Amanah Scotts Properties (KL) Sdn Bhd & Ors and another appeal*.

**[28]** We are aware that the first to third appellants have failed to pay the respondent the past costs ordered by the High Court. It is an indicia of impecuniosity of the second and third appellants too. However, we are of the view that these past costs which are due and payable should be recovered through enforcement proceedings instead of being ordered as security for costs.

**[29]** Moving on to the fourth and fifth appellants, it is plain that the fourth appellant which has been placed under JMO is impecunious and unable to pay its costs. Consequently, we find that the security for costs ought to be accordingly ordered pursuant to s 580A of the CA. As for the fifth appellant which is dormant, it is reasonable for us to infer that there is no income stream as far as the fifth appellant is concerned. The sole asset of the fifth appellant which is the land that houses the factory operating that produces the edible oil cannot in our view be considered for security for costs because it formed part and parcel of the subject matter of the agreement that is now under appeal which may form part of the asset which ultimately belong to the respondent. It follows therefore that the fifth appellant is also impecunious and unable to pay its costs.

**[30]** In the premises, we find that the respondent has justifiably made out its case that security for costs ought to be ordered against the fourth and fifth appellants.

**[31]** We are lastly mindful that the appellants have also implored us in reliance on the case of *Menon v Abdullah Kutty* that security for costs ought not to be ordered because there was no prior notice to seek security for costs served by the respondent on the appellants as well as that the application here has not been made with promptitude. Although we acknowledge it is good practice but it is however our view that there is no mandatory of service of a prior notice to seek security for costs expressly required in s 44(1) of the CJA and r 17(1) of the RCA. Additionally, we do not find that the respondent was lackadaisical which resulted in inordinate delay in the making of its application for security for costs in the circumstances herein. The appellant has also not demonstrated that it has suffered prejudice in any way as the result of the alleged delay.

**[32]** As to the amount of the security for costs, we assess a fair and reasonable total cost of RM50,000 for all the three forthcoming interlocutory matter ('IM') appeals which will be heard together.

CONCLUSION

**[33]** It is for the foregoing reasons that we ordered security for costs as so ordered.

*Order accordingly.*

Reported by Ashok Kumar